

## Opinion No. 24-3761

March 20, 1924

**BY:** MILTON J. HELMICK, Attorney General of New Mexico. Captain Judge Advocate Generals, N. M. N. G

**TO:** Requested by: Lt. Col. J. W. Skipwith, Adj. Gen. N. M. N. G., Santa Fe, New Mexico.

### **Sentences of Courts Martial in New Mexico National Guard May be Enforced by the United States Marshal.**

In Case of Sentence of Imprisonment, U. S. Marshal Can Lodge Prisoners in any County Jail and Sheriff Must Accept Prisoner as a United States Prisoner.

#### **OPINION**

{\*134} 1. This is to replace letter of August 11, 1923.

2. Inquiry is made as to the power of Courts-Martial of New Mexico National Guard to impose and enforce sentences of imprisonment.

3. Section 108 of the National Defense Act, accepted by New Mexico, provides that in the National Guard not in the service of the United States "all processes and sentences of said courts shall be executed by such civil officers as may be prescribed by the laws of the several states and territories, and in any state where no provision shall have been made for such action \* \* \* such processes and sentences shall be executed by a United States marshal or his duly appointed deputy."

4. Section 106 of the same Act provides that "all courtmartial of the National Guard, not in the service of the United States, including summary courts, shall have the power to sentence to confinement in lieu of fines authorized to be imposed: Provided, that such sentences of confinement shall not exceed one day for each dollar of fine authorized."

5. The laws of New Mexico make no provision for the aid of civil authorities in enforcing sentences of courts-martial at times when the National Guard is not called into duty by the Governor. Of course when the Guard is on duty by order of the Governor there is no difficulty in the situation because convicted soldiers may be confined in the guard house or in jails designated by the Governor. (Section 3819 Code of 1915.)

6. When the National Guard is not on duty by order of the Governor, it is my opinion that processes and sentences of courtmartial are to be executed by the United States marshal. I also find, according to circular letter No. 73 M. B., November 20th, 1920, that the war department has held that section 106 means that a court martial may imprison or fine, in its discretion, and that imprisonment is not restricted to cases of default of

payment of fine. It was formerly thought that a court martial could only impose sentences of imprisonment in lieu of fines, but the war {\*135} department has ruled otherwise, as appears from the circular above mentioned. In case of sentences of imprisonment the United States marshal could lodge the prisoner in any county jail and, in my opinion, the sheriff must take the prisoner as a United States prisoner in accordance with the statutes of New Mexico.

7. In case a member of the Guard disobeys orders to report for duty he is subject to court-martial and may be arrested and brought before the court as provided in Section 108 of the National Defense Act. In such case the process of the court-martial shall run in the name of the United States and be served by the United States marshal.

8. In my opinion legislation by the State of New Mexico is needed to bring about a satisfactory situation.